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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,419	09/16/2003	Abraham Jacob Sacks	030801	2708

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EXAMINER	
HORTON, YVONNE MICHELE	

ART UNIT	PAPER NUMBER
3635	

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/663,419	SACKS ET AL.	
	Examiner	Art Unit	
	Yvonne M. Horton	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10/25/04, 11/12/05 & 11/17/05*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Status of the Claims

Claims 1-18 remain as originally filed. Thus, an Action on the merits follows.

Response to Amendment

The amendment filed 10/25/04 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: that the angles of the side walls of the furs be "between approximately 20 and 50 degrees and preferably 45 degrees. The original disclosure, on page 10 clearly states that the angles of the side walls "are" 45 degrees. There is nothing in the specification supporting the newer angular side wall dimension of "between 20 and 50 degrees".

Applicant is required to cancel the new matter in the reply to this Office Action.

Specification

The substitute specification filed 10/25/04 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: it contains new subject matter, as stated above.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no support in the specification for the indentations in the transverse strands being perpendicular to the first plane. In fact, page 9 of the original specification details that the furs are "V-shaped", while page 10 of the original

specification clearly requires that the side walls of the furs (the indentations) be 45 degrees or less. A perpendicular indentation includes a 90 degree angle to any plane, surely well over the disclosed "V-shape" or 45 degree angle or less. Until clarification and or correction is received, the claims have been examined as the furs having a "V-shape" with angled side walls having a degree of 45 degrees or less.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

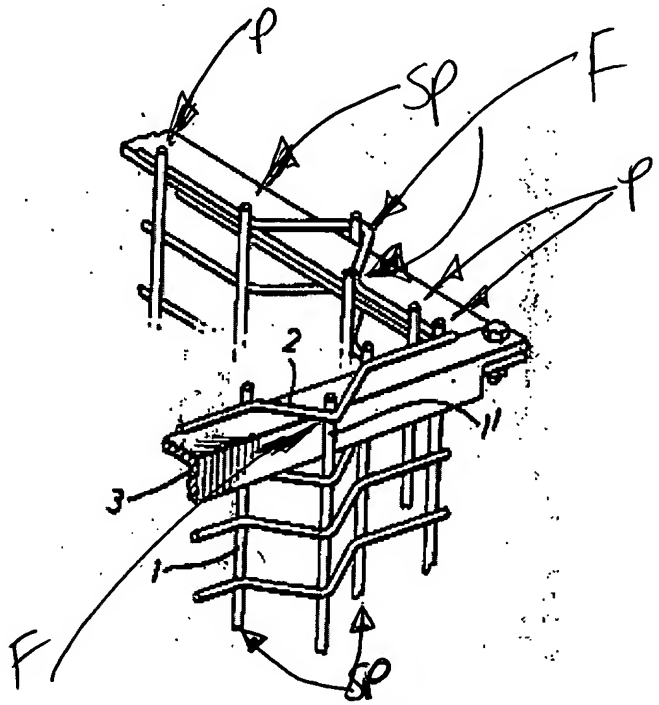
In claims 1,15 and 18 in lines 20, 22, and 26; respectively, it is not clear if the "said longitudinal strands" are referring to the "primary" or "secondary" "longitudinal strands". Until clarification is received, the claims have been examined as the furs extending between the "secondary longitudinal strands". Correction and clarification is required.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,7,12 and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #4,003,178 to DOUTHWAITE. DOUTHWAITE discloses a welded wire

lathing, column 2, lines 5-8, including a plurality of spaced-apart, approximately parallel transverse strands (2,T) substantially located in a first plane; a plurality of spaced apart,



approximately parallel primary longitudinal strands (P) also substantially located in said first plane, intersecting and in contact with said transverse strands (2,T), a plurality of secondary longitudinal strands (SP) also substantially placed in said first plane and closely spaced and approximately parallel with, some of said primary longitudinal strands (P) thus forming pairs of longitudinal strands (SP) such that the pairs (SP) defining a plurality of longitudinal slots (the space between the pairs (SP)) located at predetermined spaced intervals extending across said lathing material, said plurality of transverse strands (T) have a plurality of spacing furs (F) situated between said pairs of longitudinal strands (SP) and formed by bending said transverse strands into indentations having tips disposed in a second plane, away from the first plane.

Regarding claim 7, both the primary (P) and secondary (SP) longitudinal strands have a

shaped cross-sectional profile, clearly circular. In reference to claim 12, depending upon how the mesh of DOUTHWAITE is positioned, the transverse strands (T) are inherently capable of being disposed in the vertical direction and the secondary (SP) and primary longitudinal strands (P) are inherently capable of being disposed in the horizontal direction. Regarding claim 13, the strands (T), (P) and (SP) are inherently galvanized steel, column 2, lines 31-34.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-6,8-10,11 and 14 –17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,003,178 DOUTHWAITE. DOUTHWAITE discloses the basic claimed lathing material as detailed above, except for width of the slots, except for the use of fasteners, except for explicitly disclosing that his material can be wound into rolls, except for explicitly disclosing a flattened cross-sectional profile of the strands, except for disclosing an angle of inclination of the sides of the spacing furs, and except for disclosing a dimension that the spacing furs are inclined from the first plane. In reference to claim 2, the applicant is reminded that the fasteners are not a positive part of the claimed limitations, and as such, the prior art merely has to be capable of receiving fasteners. Thus, DOUTHWAITE although does not detail the use of a fastener, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (SP) are capable of receiving the shaft of a fastener while also retaining the head of the

fastener. Although fasteners are not disclosed by DOUTHWAITE, clearly the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose or sliding from its original position when concrete or something similar is poured thereon. In further reference to claim 2, and the width of the slots, it too would have been obvious to one having ordinary skill in the art at the time the invention was made to select a slot width suitable for use with fasteners selected as an obvious matter of design choice. For instance, if the lathing where to be secured requiring little to no movement perhaps a slot width small enough to make a "play-free" fit would be chosen. However, if the lathing required a little movement, such as for readjusting the lathing prior to pouring of concrete, for instance, a larger slot width would be fitting because then there would be a little room about the head of the fastener thereby allowing movement or "play" for adjustments. Regarding claim 3, DOUTHWAITE also does not disclose that his lathing material can be wound into rolls. He does; however, disclose that his material is flexible, column 1, line 7. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the mesh material of DOUTHWAITE, being flexible, and prior to attachment to members (3), is fully capable of being rolled. Mesh screen made from galvanized metals are very well know for their ability to be rolled and unrolled. Having the ability to be wound into rolls allows the material to be compact and provides for an ease of shipping and storage, and allows for an ease of erection or installation at the work site. Furthermore, the applicant is reminded that the claims are directed to a 'lathing material", and the requirement of the material being "wound" into a roll is a

method step. The method of forming a device is not germane to the issue of patentability of the device itself. Thus, the method step of the material being "wound" has not been given patentable weight. In reference to claims 4-6,8,9 and 17, DOUTHWAITE does not disclose a specific cross-sectional shape or dimension for his strands. He does however, show strands that appear to be round or circular and details that his strands can be heavy gauge wire, column 1, line 36. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the selection of the cross-sectional shape or dimension of the strands would be and obvious matter of design choice suitable for the use intended. For instance, if a more rigid lathing is desired a larger sized cross-sectional dimension would be needed; whereas, if a less rigid lathing were required, a smaller cross-sectional dimension would be needed. With further reference to claim 8, again, although DOUTHWAITE does not disclose the use of a flattened cross-sectional shape strands, the applicant has not shown any criticality for a shaped cross-sectional shape strand over a flattened cross-section shape strand. Hence, the selection of either an art known circular shape or a flattened shape would have been well within the general skill of a worker in the art. Regarding claims 10 and 11, DOUTHWAITE does not detail an angle of inclination of the sides of the spacing furs. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select an angle of inclination suitable for the use intended as an obvious matter of design choice. For instance, a larger angle of inclination allows the lathing to be positioned more evenly and securely against a supporting structure; whereas a smaller sized angle creates a

sharper or less flattened area that is placed against the supporting surface. The sharper area is not as stable as the more flattened are created by the larger angle of inclination of the sides of the spacing furs. Also, it is clear from the figures that the angle of inclination of the side walls of the furs is clearly approximately 45 degrees. In reference to claim 14, DOUTHWAITE does not detail how far the spacing furs extend from the first plane. However, once more, this is an obvious matter of design choice that would depend upon the desired strength of the lathing and how the lathing is intended to be used. Regarding claim 15, DOUTHWAITE discloses the basic claimed lathing as detailed above for claim 1, except for the width of the slots and except for the use of fasteners. DOUTHWAITE does not detail the width of the slots or the use of a fastener; however, the fasteners are not positively cited in the claim. Even so, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (SP) of DOUTHWAITE are capable of receiving the shaft of a fastener while also retaining the head of the fastener. Although fasteners are not disclosed by DOUTHWAITE, clearly the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose or sliding from the desired position during use and or installation. In reference to claim 16, the longitudinal strands (2,T), (P) and (SP) have a shaped cross-section profile that is circular or round. Regarding claim 17, although DOUTHWAITE does not disclose the use of a flattened cross-sectional shape strands, the applicant has not shown any criticality for a shaped cross-sectional shape strand over a flattened cross-section shape strand. Hence, the

selection of either an art known circular shape or a flattened shape would have been well within the general skill of a worker in the art.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,003,178 to DOUTHWAITE in view of US Patent #5,540,023 to JAENSON. In further regards to claims 4 and 5, DOUTHWAITE does not explicitly detail a grid spacing of the strands.. However, JAENSON discloses a grid spacing of 2 inches, column 6, line 13. He does not; however disclose a grid spacing of specifically 1.4-1.6 inches but clearly 1.4-1.6 falls within JAENSON's range of 2 inches. Again, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the grid spacing of 1 to 2 inches for DOUTHWAITE as taught by JAENSON, in order to ensure proper adhesion of concrete or plaster disposed thereon. Further, the selection of grid spacing is an obvious matter of design choice suitable for the use intended. A grid having smaller spacing might be more rigid or firm; whereas, a grid having larger spacing might be a bit less rigid.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,003,178 to DOUTHWAITE. DOUTHWAITE inherently discloses the method of fabricating a building wall using welded wire lathe including the steps of arranging a plurality transverse strands (T); arranging a plurality of parallel primary longitudinal strands (P); arranging a plurality of secondary strands to form pairs (SP) having slots therebetween; welding the longitudinal (P) and (SP) strands to the transverse strands (T), column 2, lines 5-8, to form a mesh; and forming a plurality of spacing furs (F) by bending the transverse strands (T). DOUTHWAITE discloses the basic claimed method

except for the width of the slots and the use of fasteners. DOUTHWAITE does not detail the width of the slots or the use of a fastener; however, the fasteners are not positively cited in the claim. Even so, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (SP) of DOUTHWAITE are capable of receiving the shaft of a fastener while also retaining the head of the fastener. Although fasteners are not disclosed by DOUTHWAITE, clearly the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose or sliding from the desired position during use and or installation.

Further, DOUTHWAITE also does not disclose that his lathing material can be rolled. He does however, disclose that his material is flexible. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the mesh-like material of DOUTHWAITE, being flexible and prior to attachment to the metal embers (3), is fully capable of being rolled. Mesh screen made from galvanized metals are very well know for their ability to be rolled and unrolled. Having the ability to be wound into rolls allows the material to be compact and provides for an ease of shipping and storage, and installation at the job site.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot-in-part in view of the newly revised ground(s) of rejection.

However, with regards to the applicant's arguments filed 11/12/06 and 11/17/06, have been fully considered but they are not persuasive. The claims are

directed to an apparatus – a welded wire lathing, and not to a method. Thus, the method of the material being "wound" is not given patentable weight in apparatus claims. In response to applicant's argument and evaluation report submitted 11/17/05, detailing that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., JAENSON is not physically capable of being rolled and unrolled and maintain its original cross-sectional shape or configuration)are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on (571) 272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Yvonne M. Horton
Examiner
Art Unit 3635
09/01/06